

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

UNITED STATES of AMERICA for the Use
and Benefit of WEBCOR CONSTRUCTION,
INC. dba WEBCOR BUILDERS, and
WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS,

Plaintiffs,

vs.

DICK/MORGANTI, a joint venture; DICK
CORPORATION; THE MORGANTI
GROUP; AMERICAN CASUALTY
COMPANY OF READING, PA;
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, and
DOES 1 through 10, inclusive,

Defendants.

AND ALL RELATED COUNTER-CLAIMS;
THIRD PARTY COMPLAINTS; and
CONSOLIDATED ACTION.

Case No.: 3:07-CV-02564-CRB

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM [F.R.C.P. 12(b)(6)]
AND MOTION FOR A MORE DEFINITE
STATEMENT [F.R.C.P. 12(e)]**

Hearing Date: February 22, 2008

Hearing Time: 10:00 a.m.

Location: Courtroom 8, 19th Floor

Judge: Hon. Charles R. Breyer

The motions of Defendants DICK CORPORATION, THE MORGANTI GROUP, INC., DICK/MORGANTI; and Defendants and Third Party Complainants, AMERICAN CASUALTY COMPANY OF READING, PA, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA (“Defendants”) to Dismiss for Failure to State a Claim and For a More Definite Statement came on for hearing before the undersigned on February 22, 2008. All parties having appeared through counsel, the Court having reviewed the moving papers, opposition papers, and reply papers, and having heard oral argument, orders as follows:

The Motion to Dismiss for Failure to State a Claim is GRANTED because Plaintiff WEBCOR CONSTRUCTION, INC.’s May 15, 2007 Complaint does not allege facts sufficient to state a claim pursuant to 40 U.S.C. 3131 et seq. The second cause of action for “Enforcement of Miller Act Payment Bond” is dismissed with prejudice and in its entirety, and AMERICAN CASUALTY COMPANY OF READING, PA, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA are dismissed, with prejudice, as parties to Webcor Construction, Inc.’s Complaint.

IT IS FURTHER ORDERED that the Defendants’ Motion for a More Definite Statement is GRANTED. The Court hereby orders the Plaintiff to fashion a more definite statement, identifying and clarifying the following:

1. Plaintiff’s specific breach of contract allegations with respect to its each of Plaintiff’s change order requests (“COR’s”) numbered 63, 64, and 65, as well as the basis for alleging a quantum meruit cause of action for each of these COR’s.
2. Plaintiff’s specific allegations and causes of action for the “retention and base contract amounts” alleged in Plaintiff’s January 15, 2008 Status Update filed with the Court.

IT IS SO ORDERED:

Dated: _____, 2008

Judge of the United States District Court
Northern District of California